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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUNTER SCHWARZBAUER,
HELMUT SPIEGL, ERNST AMBICHL,
and BERND GREIFENEDER

Appeal 2009-005201
Application 10/676,227
Technology Center 2100

Before LANCE LEONARD BARRY, HOWARD B. BLANKENSHIP, and STEPHEN C. SIU, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-31, which are all the claims in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Representative Claims

1. A system for automatic context management for testing, monitoring and automating a network application having client side executable code, said system comprising:

a computer having a CPU and a storage device; and

a computer-readable medium encoded with a computer program configured to perform the steps of

parsing said client side executable code so as to determine a subsequent state of the network application free of interaction with a user,

recording at least one context-full test script,

providing a context-full API,[2] and

replaying said context-full test script.

28. A method of fuzzy form detection, said method comprising the steps of:

comparing a form to be submitted to at least one form in a session history;

[2] Application Program Interface.

generating data based upon differences resulting from the comparing step;

performing said comparing and generating steps for each form in said session history;

choosing one of the forms in said session history having the greatest similarity to said form to be submitted based upon the generating step results; and

applying form merging instructions to said chosen session history form to obtain a resulting form that is substantially identical to said form to be submitted.

Examiner's Rejections

Claims 1-12 and 29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Weinberg (US 6,549,944 B1).

Claims 13-28, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weinberg and Sidles (US 2002/0062342 A1).

ANALYSIS

Claims 1-12 and 29 -- Section 102 over Weinberg

Claims 1 and 29 are independent. We agree with Appellants that claim 1 is representative of the invention for the purposes of the arguments that Appellants present on appeal in response to the § 102 rejection.

Claim 1 recites a system that includes a computer program configured to perform the step of parsing client side executable code so as to determine a subsequent state of a network application free of interaction with a user. The statement of the rejection submits that the "Dynamic Scan" feature of

the Astra system, as described by Weinberg at columns 23 and 24, meets the language of claim 1.

Weinberg discloses that Astra parses a dynamic page returned from a Web site, in order to update nodes in a site map that correspond to each outgoing link of the dynamic page. Weinberg further discloses that Astra parses any static Web pages that are retrieved with the browser during the Dynamic Scan capture session, and updates the site map accordingly. Weinberg col. 24, ll. 26-32.[3]

While the Examiner seems to suggest that "client-side" does not require parsing on the client side, we do not find any description of parsing executable code in the indicated sections of Weinberg. The Examiner is of the view that since Weinberg teaches parsing the URLs (Uniform Resource Locators) of Web sites to derive content objects -- which may include, for example, executable code such as JAVA applets (col. 8, ll. 34-52) -- Weinberg discloses parsing client-side "executable code."

However, Appellants claim parsing "executable code," rather than parsing URLs or Web page content that might have executable code as a link target or as an element in an HTML document. According to Appellants, the parsing of executable code is not standard in the art (*see, e.g.*, Spec. 11: 1-3, 16-21). We agree with Appellants that the rejection fails to show that Weinberg describes parsing executable code. "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.,* 793 F.2d 1565, 1571 (Fed. Cir. 1986).

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[3] Weinberg Figure 12, step "G.", incorrectly identifies the Web server as parsing the dynamically-generated page and updating the site graph. Astra 94, on the client computer, performs the operations of step "G."

Claims 13-28, 30, 31 -- Section 103(a) over Weinberg and Sidles

We agree with Appellants that each of independent claims 30 and 31 contains limitations similar to those of claim 1 with respect to parsing executable code, which the rejection fails to show disclosure or suggestion of in the relied-upon reference (Weinberg). Each of claims 13 through 27 incorporates the limitations of base claim 1, and the § 103(a) rejection applied against those claims does not remedy the deficiencies in the § 102 rejection of claim 1.

The remaining claim (independent claim 28), however, is directed to a method of fuzzy form detection and does not require the parsing of executable code. Appellants reproduce language from claim 28, but Appellants' arguments[4] are based on the assertion that the rejection fails to show that Sidles teaches generating data based upon differences resulting from the "comparing" step as claimed.

The Examiner's rejection relies on Sidles, paragraphs [0061] through [0062] and [0086] through [0090], for a teaching of generating data based on differences resulting from a "comparing" step commensurate with the requirements of claim 28.

Appellants do not address the teachings of paragraphs [0086] through [0090] in Sidles. Appellants address paragraphs [0061] through [0062], concluding that Sidles does not generate data based upon the differences of any comparison or rule application, but merely attempts to apply rules.

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[4] "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." 37 C.F.R. § 41.37(c)(1)(vii).

In the paragraphs of Sidles that Appellants avoid, the reference describes a completed form analysis engine that calls upon a history form compare system to compare multiple copies of a form within the history database to see if the versions filled in by different users match. Sidles ¶ [0088] (col. 2, ll. 2-5 of page 9). If two or more versions of the form in the history database match, the history form compare system generates a new set of rules for the particular form, using a new rule generator. *Id.* (col. 2, ll. 5-15 of page 9). The Examiner finds that this "new set of rules" data corresponds to the data that is generated based on differences resulting from a "comparing" step as claimed. We are not persuaded that Sidles fails to teach "generating data based upon differences resulting from the comparing step" as recited in claim 28, and thus not persuaded that the claim has been rejected in error.

Conclusion

Based on the foregoing, we do not sustain the § 102 rejection of claims 1-12 and 29. We do not sustain the § 103(a) rejection of claims 13-27, 30, and 31. We sustain the § 103(a) rejection of claim 28.

DECISION

The rejection of claims 1-12 and 29 under 35 U.S.C. § 102(e) as being anticipated by Weinberg is reversed.

The rejection of claims 13-28, 30, and 31 under 35 U.S.C. § 103(a) as being unpatentable over Weinberg and Sidles is reversed with respect to claims 13-27, 30, and 31 but affirmed with respect to claim 28.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART

msc

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